

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**ROBERT BLACKBURN AND
ROBERT D. BURNS,**
Plaintiffs,

V.

**AMERICAN ZURICH INSURANCE
COMPANY,**
Defendant.

§
§
§
§
§
§
§
§
§

**CIVIL ACTION NO. 4:19-CV-04814
JURY**

AMERICAN ZURICH INSURANCE COMPANY’S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant AMERICAN ZURICH INSURANCE COMPANY (hereinafter “Zurich” or “Defendant”) files this its Notice of Removal to the United States District Court for the Southern District of Texas, Houston Division, on the basis of diversity of citizenship, and amount in controversy, and respectfully shows the following:

I. PROCEDURAL BACKGROUND

1. On November 8, 2019, Plaintiffs Robert Blackburn and Robert D. Burns (“Plaintiffs”) filed their Original Petition in a case styled *Robert Blackburn and Robert D. Burns v. American Zurich Insurance Company*; Cause No. 2019-81456, pending in the 270th Judicial District Court of Harris County, Texas.

2. Defendant received a copy of the Plaintiffs’ Original Petition on November 13, 2019.

3. Defendant files this notice of removal within 30 days of receiving Plaintiff’s Original Petition. *See* 28 U.S.C. § 1446(b). This Notice of Removal is being filed within one year of the commencement of this action. *See id.*

4. All pleadings, process, orders, and other filings in the state court action are attached to this Notice as required by 28 U.S.C. § 1446(a).

5. Attached hereto are copies of the following documents:

- **Exhibit 1:** The state court's Docket Sheet;
- **Exhibit 2:** Plaintiffs' Original Petition;
- **Exhibit 3:** Citation upon American Zurich Insurance Company;
- **Exhibit 4:** Defendant American Zurich Insurance Company's Original Answer; and
- **Exhibit 5:** List of Parties and Counsel.

II. BASES FOR REMOVAL

6. Removal is proper based on diversity of citizenship under 28 U.S.C. §§ 1332(a)(1), 1441(a), and 1446.

A. Plaintiffs and Zurich are diverse.

7. **Plaintiff** Robert Blackburn is a resident of the State of Texas.

8. **Plaintiff** Robert D. Burns is a resident of the State of Texas.

9. **Defendant** American Zurich Insurance Company is an Illinois corporation engaged in the insurance business with a statutory home office and its principal place of business located at 1299 Zurich Way, Schaumburg, Illinois 60196. Zurich is authorized to transact business and has transacted business in Texas. Zurich is therefore not a citizen of the State of Texas for diversity purposes.

10. This lawsuit is between citizens of different states, and there is complete diversity of citizenship between the Plaintiffs and Zurich.

B. The Amount in Controversy Exceeds the Jurisdictional Requirements for Subject Matter Jurisdiction.

11. In determining the amount in controversy, the court may consider “policy limits... penalties, statutory damages, and punitive damages.” *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); see *Ray v. State Farm Lloyds*, No. CIV.A.3:98-CV-1288-G, 1999 WL 151667, at * 2-3 (N.D. Tex. Mar. 10, 1999) (finding a sufficient amount in controversy in plaintiff’s case against their insurance company for breach of contract, fraud, negligence, gross negligence, bad faith, violations of the Texas Insurance Code, violations of the Texas Deceptive Trade Practices Act, and mental anguish); *Fairmont Travel, Inc. v. George S. May Int’l Co.*, 75 F. Supp.2d 666, 668 (S.D. Tex. 1999) (considering DTPA claims and the potential for recovery of punitive damages for the amount in controversy determination); *Chittick v. Farmers Ins. Exch.*, 844 F. Supp. 1153, 1155 (S.D. Tex. 1994) (finding a sufficient amount in controversy after considering the nature of the claims, the types of damages sought and the presumed net worth of the defendant in a claim brought by the insureds against their insurance company for actual and punitive damages arising from a claim they made for roof damages).

12. This is a civil action in which the amount in controversy exceeds \$75,000. Paragraph 5 of Plaintiffs’ petition indicates “Plaintiffs seek monetary relief exceeding \$1,000,000.” Plaintiffs allege that Defendant is liable under an insurance policy because Plaintiffs made a claim under that policy and allegedly Defendant wrongfully adjusted and underpaid Plaintiffs’ claim. The allegations in Plaintiffs’ petition indicate Plaintiffs are seeking damages for purported breach of contract, Texas Insurance Code violations, Texas Deceptive Trade Practices Act violations, and statutory penalty interest, punitive damages, and attorney’s fees. Though Defendant denies Plaintiffs are entitled to the damages sought in Plaintiffs’ petition, the petition

demonstrates that the amount in controversy in this case exceeds the jurisdictional requirements for federal diversity jurisdiction.

III. THIS REMOVAL IS PROCEDURALLY CORRECT

13. Zurich received service of this lawsuit on November 13, 2019. Thus, is filing this Notice within the 30-day time period required by 28 U.S.C. § 1446(b).

14. Venue is proper in this District and Division under 28 U.S.C. §1446(a) because i) this District and Division include the county in which the state action has been pending, and ii) a substantial part of the events giving rise to Plaintiffs' claims allegedly occurred in this District and Division.

15. Pursuant to 28 U.S.C. §1446(a), all pleadings, process, orders, and all other filings in the state court action are attached to this Notice.

16. Promptly after Zurich files this Notice of Removal, written notice of the filing will be given to Plaintiffs pursuant to 28 U.S.C. §1446(d).

17. Promptly after Zurich files this Notice of Removal, a true and correct copy of same will be filed with the Clerk of the Harris County District Court pursuant to 28 U.S.C. §1446(d).

IV. CONCLUSION

18. Based upon the foregoing, the exhibits submitted in support of this removal, and other documents filed contemporaneously with this Notice of Removal, Defendant AMERICAN ZURICH INSURANCE COMPANY removes this case to this Court for trial and determination.

Respectfully submitted,

By: /s/ George Arnold

George H. Arnold, Attorney-in-Charge

State Bar No. 00783559

garnold@thompsoncoe.com

Susan Sparks Usery

State Bar No. 18880100

susery@thompsoncoe.com

THOMPSON, COE, COUSINS & IRONS, LLP

One Riverway, Suite 1400

Houston, Texas 77056

Telephone: (713) 403-8210

Facsimile: (713) 403-8299

**ATTORNEYS FOR DEFENDANT
AMERICAN ZURICH INS. CO.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of December, 2019, a true and correct copy of the foregoing instrument was delivered to all known counsel of record in accordance with the Federal Rules of Civil Procedure, and any applicable Local Rules, as follows:

Hunter Klein
Robert Green
GREEN & KLEIN
440 Louisiana Street, Suite 1900
Houston, Texas 77002
klein@greentriallaw.com
green@greentriallaw.com
Attorneys for Plaintiffs

/s/ George Arnold

George Arnold